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HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Miscellaneous Petition No.1001 of 2016

Shailesh Singh, son of late Ramnarayan Singh, aged about 44 years, resident of Behind Old Police Station, Village Shivnandanpur, Police Station Bishrampur, District Surajpur, Chhattisgarh

---- **Petitioner**

versus

State of Chhattisgarh, through the Station House Officer, Police Station Bishrampur, District Surajpur, Chhattisgarh

---- **Respondent**

For Petitioner	:	Shri V.K. Pandey, Advocate
For State/Respondent	:	Shri O.P. Sahu, Government Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

3.10.2016

1. The present petition under Section 482 of the Code of Criminal Procedure (Cr.P.C.) has been filed assailing the order dated 1.10.2014 passed by the Chief Judicial Magistrate, Surajpur in Criminal Case No.1655 of 2012. Vide the said impugned order, the Court below has allowed the application under Section 319 Cr.P.C. preferred by the prosecution, whereby it has been ordered for impleading Petitioner Shailesh Singh also as one of the accused in Crime No.200 of 2012 registered at Police Station Bishrampur, District Surajpur.
2. The brief facts relevant for adjudication of the present case is that one Vinod Kumar Rai, who is the Complainant in the said case lodged a complaint before the Police Station Bishrampur alleging that the accused persons in the case, namely, Vinod Das, Smt. Gulabvati Das, Pramod Kumar Das and Nand Kumar alias Nandu had taken an amount of Rs.4.5 Lakhs from the Complainant on the pretext of getting employment with the Railway Department. The police registered an

offence against them under Section 420 read with Section 34 of the Indian Penal Code. Subsequently, the matter was put to trial before the Court of Chief Judicial Magistrate, Surajpur and Complainant Vinod Kumar Rai was examined as PW-1 on 18.6.2013. While his statement was being recorded, there was a specific averment made by the Complainant that he had deposited an amount of Rs.50,000/- in the bank account held by present Petitioner Shailesh Singh, son of Ramnarayan with the State Bank of India, Bishrampur Branch. Further, the prosecution found that in the course of investigation, the investigating agency could not trace said Shailesh Singh for want of proper address and, therefore, he was not proceeded against and the prosecution immediately moved an application under Section 319 Cr.P.C. (Annexure P-4 with the present petition) on 7.9.2013 and the Court below upon considering the application under Section 319 Cr.P.C. and hearing the parties vide the impugned order dated 1.10.2014 allowed the same and ordered for making the present Petitioner to be also made an accused to take cognizance against Petitioner Shailesh Singh and ordered for issuance of summons against Shailesh Singh. It is this order dated 1.10.2014 which is under challenge in the present petition.

3. Learned Counsel for the Petitioner assailing the said order submits that in fact there was no material whatsoever on the part of the prosecution to implicate the Petitioner in the said offence and the Court below has erred in not appreciating the statement of the Complainant in its proper perspective and has committed an error while allowing the application under Section 319 Cr.P.C. According to the Petitioner, the order dated 1.10.2014 was not a stay order, there was no sufficient reasons assigned by the Court below while allowing the application under Section 319 Cr.P.C. According to the Petitioner, the Court below ought to have *prima facie* took note whether there

was any role played by the Petitioner in the commission of the offence and if there was no role played whatsoever, allowing of the application under Section 319 Cr.P.C. was bad in law and, therefore, deserves to be set aside/quashed. Learned Counsel for the Petitioner relied upon a decision of the Supreme Court in **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92**. According to the Petitioner, there has to be a cogent and strong material while considering the application under Section 319 Cr.P.C. against any person sought to be made as an accused. In the instant case, no such strong piece of evidence was available and, therefore, the Court below has committed an error in law and on facts while allowing the application under Section 319 Cr.P.C.

4. Learned Counsel for the State, however, opposing the application submits that the very fact that the Complainant in his statement has stated of depositing Rs.50,000/- in the bank account of the Petitioner is a *prima facie* strong piece of evidence against the Petitioner. The State Counsel also submits that this very fact also establishes that at least *prima facie* the Petitioner was also a beneficiary from the alleged fraud being played by the accused persons. The State Counsel also referring to the statement of the Complainant submits that the Petitioner all along has not been able to deny the fact that the amount of Rs.50,000/- has not been deposited in his account and if there is an entry of Rs.50,000/- made in the account of the Petitioner made by the Complainant then there has to be a plausible explanation given by the present Petitioner as to how the money came to his account. In the absence of any proper justification/explanation provided by the Petitioner, the Court below cannot be said to have committed any fault in allowing the application under Section 319 Cr.P.C. The Counsel for the State further took the Court through the First Information Report where also there is a reference made in respect of the transaction

made by the Complainant of depositing an amount of Rs.50,000/- in the bank account of the Petitioner. The said fact can be verified from the last three lines of the first page of the contents of the FIR itself, wherein there is a categorical averment made by the Complainant of depositing an amount of Rs.50,000/- also giving the details of the bank account, bank name and its branch, the fact which has not been denied by the Petitioner. Thus, the State Counsel prayed for rejection of the instant criminal miscellaneous petition.

5. Having considered the rival contentions put-forth on either side and on perusal of the record, certain undisputed facts which is revealed is that of a complaint being lodged by Vinod Kumar Rai and on the basis of which an FIR was lodged. In the FIR itself, the reference is made of the Complainant depositing an amount of Rs.50,000/- in the bank account of the Petitioner mentioned at the branch and the account number also being reflected in the FIR. Further, the Petitioner has not been able to give any explanation as to how this money has reached to his account. No plausible explanation or justification has also been given by the Petitioner. Further, from the application under Section 319 Cr.P.C. it reflects that the fact had come up during the course of the investigation. However, since there was no proper address and other details, the police authorities seem to have not made him an accused. Therefore, it necessitated the prosecution to come forward and move an appropriate application for making the Petitioner as accused person in the light of the statement made by Vinod Kumar Rai, the Complainant. When this Court looks into the records and the contents of the FIR as well as the statement which has been made by the Complainant before the Court, the role of the Petitioner *prima facie* is reflected. Another aspect which cannot be brushed aside is the fact that the application under Section 319 Cr.P.C. has not been moved at the fag end of the trial. It is clearly reflected that the said

application was immediately moved after the statement of PW-1, the Complainant was made. Thus, on that count also, the order of the Court below cannot be said to be bad in law.

6. So far as the judgment delivered in **Hardeep Singh case** (supra) cited by Learned Counsel for the Petitioner in respect of the provision of Section 319 Cr.P.C. is concerned, the principles and the ratio of law laid down by the Supreme Court in the said case is not disputed, but the facts of the said case are distinguishable from the facts of the present case and the facts in **Hardeep Singh case** (supra) were based under entirely different contextual background when compared to the facts of the present case. Even otherwise, the said judgment also does not come to the rescue of the Petitioner on the simple ground that the reference of the present Petitioner is reflected even in the FIR wherein the act alleged against the Petitioner is disclosed emphatically, but for some reason, the prosecution had not made him an accused or proceeded against him. Thus, the said judgment is distinguishable.
7. In **Shyamdeo Modi v. State of Jharkhand, 2006 Cri.L.J. 4195**, it has been held as under:

“11. The Hon'ble Supreme Court, in the case of Dr. S.S. Khanna v. Chief Secretary Patna and another reported in AIR 1983 SC 595 has held as follows (Para 13)

“that a plain reading of Section 319(1) which occurs in Chapter XXIV dealing with general provisions as to inquiries and trials, clearly shows that it applies to all the Courts including a Sessions Court and such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused”

12. The Hon'ble Supreme Court, in the case of Michael Machado and another v. Central Bureau of Investigation and another reported in (2000) 3 SCC 262 : (AIR 2000 SC 1127) has not held that such power under Section 319 Cr.P.C. cannot and should not be exercised at the fag end of the trial rather the Hon'ble Supreme Court in the case of Dr. S.S. Khanna v. Chief Secretary, Patna and another (supra) has held that “if the prosecution at any stage (Emphasised by Court) produced evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceeding have been quashed have also committed offence, the Court may take cognizance against them and try them along with other accused. But, of course, this power has to be exercised sparingly and only for the compelling reasons.”

8. Thus, from the aforesaid judicial pronouncement, it is clear that the exercise of the power under Section 319 Cr.P.C. is wholly dependent upon the evidence which comes during the trial and from which it may reflect that a person other than the accused was also involved in the commission of the offence. Under such circumstances, in case, if an application is moved and the same is allowed, it cannot be said to be contrary to law nor can it be said to be in any manner perverse. Thus, in the opinion of this Court, no strong case has been made out calling for interference with the impugned order.
9. For the foregoing reasons, the criminal miscellaneous petition deserves to be and is dismissed.

Sd/-

(P. Sam Koshy)
Judge